

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 16, 2009

**SENATE BILL**

**No. 402**

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**Introduced by Senator Wolk**

February 26, 2009

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~~An act to add Sections 19266 and 19560 to the Revenue and Taxation Code, relating to taxation. An act to amend, repeal, and add Section 14574 of the Public Resources Code, relating to recycling, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 402, as amended, Wolk. ~~Franchise Tax Board: collections. Recycling: beverage containers: redemption payments.~~

*Existing law requires a distributor of specified beverage containers to pay a redemption payment to the Department of Conservation for each beverage container sold or transferred for deposit in the California Beverage Container Recycling Fund. Existing law requires that the distributor pay the redemption payment not later than the last day of the 3rd month following the sale.*

*This bill would require these beverage distributors, to make the redemption payment no later than the last day of the 2nd month following the sale of the beverages, except the bill would provide a specific redemption payment schedule for sales for July, August, and September of 2009. These provisions would be repealed on June 30, 2010.*

*The bill would authorize a distributor to withhold payment of redemption payments until the next payment period when the distributor*

*has not received payment for beverage containers on which redemption payments are owed.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing laws require the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors.~~

~~This bill would require the board, in coordination with financial institutions doing business in this state, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the board to match its list of delinquent tax debtors with the lists provided by the financial institutions. The bill would authorize the board to institute civil proceedings to enforce specified provisions of the bill, and would impose specified penalties on financial institutions for failure to provide records in connection with the match system, as provided. This bill would provide that the specified use of certain data is a misdemeanor.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 14574 of the Public Resources Code is*  
2     *amended to read:*

3     14574. (a) (1) A distributor of beverage containers shall pay  
4     to the department the redemption payment for every beverage  
5     container, other than a refillable beverage container, sold or  
6     transferred to a dealer, less 1.5 percent for the distributor's  
7     administrative costs.

8     (2) ~~The~~(A) *Except as required pursuant to subparagraph (B),*  
9     *the payment made by a distributor shall be made not later than the*  
10    *last day of the*~~third~~ *second* *month following the sale. The*  
11    *distributor shall make the payment in the form and manner that*  
12    *the department prescribes.*

13    (B) (i) *Payment for sales for the month of July 2009 shall be*  
14    *made not later than October 20, 2009.*

1     (ii) *Payment for sales for the month of August 2009 shall be*  
2     *made not later than November 10, 2009.*

3     (iii) *Payment for sales for the month of September 2009 shall*  
4     *be made not later than December 1, 2009.*

5     (b) (1) Notwithstanding subdivision (a), if a distributor displays  
6     a pattern of operation in compliance with this division and the  
7     regulations adopted pursuant to this division, to the satisfaction of  
8     the department, the distributor may make a single annual payment  
9     of redemption payments, if the distributor meets either of the  
10    following requirements:

11    (A) If the redemption payment and refund value is not increased  
12    pursuant to paragraph (3) of subdivision (a) of Section 14560, the  
13    distributor's projected redemption payment for a calendar year  
14    totals less than fifty thousand dollars (\$50,000).

15    (B) If the redemption payment and refund value is increased  
16    pursuant to paragraph (3) of subdivision (a) of Section 14560, the  
17    distributor's projected redemption payment for a calendar year  
18    totals less than seventy-five thousand dollars (\$75,000).

19    (2) An annual redemption payment made pursuant to this  
20    subdivision is due and payable on or before February 1 for every  
21    beverage container sold or transferred by the distributor to a dealer  
22    in the previous calendar year.

23    (3) A distributor shall notify the department of its intent to make  
24    an annual redemption payment pursuant to this subdivision on or  
25    before January 31 of the calendar year for which the payment will  
26    be due.

27    (4) *A distributor may withhold payment of redemption payments*  
28    *until the next payment period when the distributor has not received*  
29    *payment for beverage containers on which redemption payments*  
30    *are owed pursuant to this division.*

31    (c) *This section shall remain in effect only until June 30, 2010,*  
32    *and as of that date is repealed, unless a later enacted statute, that*  
33    *is enacted before June 30, 2010, deletes or extends that date.*

34    SEC. 2. *Section 14574 is added to the Public Resources Code,*  
35    *to read:*

36    14574. (a) (1) *A distributor of beverage containers shall pay*  
37    *to the department the redemption payment for every beverage*  
38    *container, other than a refillable beverage container, sold or*  
39    *transferred to a dealer, less 1.5 percent for the distributor's*  
40    *administrative costs.*

(2) *The payment made by a distributor shall be made not later than the last day of the third month following the sale. The distributor shall make the payment in the form and manner that the department prescribes.*

(b) (1) *Notwithstanding subdivision (a), if a distributor displays a pattern of operation in compliance with this division and the regulations adopted pursuant to this division, to the satisfaction of the department, the distributor may make a single annual payment of redemption payments, if the distributor meets either of the following requirements:*

(A) *If the redemption payment and refund value is not increased pursuant to paragraph (3) of subdivision (a) of Section 14560, the distributor's projected redemption payment for a calendar year totals less than fifty thousand dollars (\$50,000).*

(B) *If the redemption payment and refund value is increased pursuant to paragraph (3) of subdivision (a) of Section 14560, the distributor's projected redemption payment for a calendar year totals less than seventy-five thousand dollars (\$75,000).*

(2) *An annual redemption payment made pursuant to this subdivision is due and payable on or before February 1 for every beverage container sold or transferred by the distributor to a dealer in the previous calendar year.*

(3) *A distributor shall notify the department of its intent to make an annual redemption payment pursuant to this subdivision on or before January 31 of the calendar year for which the payment will be due.*

(4) *A distributor may withhold payment of redemption payments when the distributor has not received payment for beverage containers on which redemption payments are owed pursuant to this division until the next payment period.*

(5) *This section shall become operative on July 1, 2010.*

SEC. 3. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to keep the California Beverage Container Recycling Fund from becoming insolvent, it is necessary for this act to take effect immediately.*

~~SECTION 1. Section 19266 is added to the Revenue and Taxation Code, to read:~~

1 19266. (a) (1) The Franchise Tax Board, in coordination with  
2 financial institutions doing business in this state, shall operate a  
3 Financial Institution Record Match System utilizing automated  
4 data exchanges to the maximum extent feasible.

5 (2) The Franchise Tax Board shall prescribe any rules and  
6 regulations that may be necessary or appropriate to implement this  
7 section. These rules and regulations shall include all of the  
8 following:

9 (A) A structure by which financial institutions, or their  
10 designated data-processing agents, shall receive from the Franchise  
11 Tax Board the file or files of delinquent debtors that the institution  
12 shall match with its own list of accountholders to identify  
13 delinquent tax debtor accountholders at the institution.

14 (B) An option by which financial institutions without the  
15 technical ability to process the data exchange, or without the ability  
16 to employ a third-party data processor to process the data exchange,  
17 may forward to the Franchise Tax Board a list of all accountholders  
18 and their social security numbers or other taxpayer identification  
19 numbers, so that the Franchise Tax Board shall match that list with  
20 the file or files of delinquent tax debtors.

21 (C) Authority for the Franchise Tax Board to exempt a financial  
22 institution from the requirements of this section if the Franchise  
23 Tax Board determines that the financial institution participation  
24 would not generate sufficient revenue to be cost effective for the  
25 Franchise Tax Board.

26 (D) Authority for the Franchise Tax Board to temporarily  
27 suspend the requirements of this section for a financial institution  
28 if a financial institution provides the Franchise Tax Board with a  
29 written notice from its supervisory banking authority that it is  
30 determined to be undercapitalized, significantly undercapitalized,  
31 or critically undercapitalized as defined by FDIC Regulation  
32 325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The  
33 notice provided pursuant to this section shall be subject to the  
34 protections of Section 19542.

35 (b) The Financial Institution Data Record Match System shall  
36 not be subject to any limitation set forth in Chapter 20  
37 (commencing with Section 7460) of Division 7 of Title 1 of the  
38 Government Code. However, any use of the information provided  
39 pursuant to this section for any purpose other than the collection  
40 of delinquent franchise or income tax or other debts referred to

1 the Franchise Tax Board for collection, as imposed under Part 5  
2 (commencing with Section 10878), Part 10 (commencing with  
3 Section 17001), Part 10.2 (commencing with Section 19280), or  
4 Part 11 (commencing with Section 23001) shall be a violation of  
5 Section 19542.

6 (e) ~~(1) To effectuate the Financial Institution Record Match~~  
7 ~~System, financial institutions subject to this section shall provide~~  
8 ~~to the Franchise Tax Board on a quarterly basis the name, record~~  
9 ~~address, and other addresses, social security number or other~~  
10 ~~taxpayer identification number, and other identifying information~~  
11 ~~for each delinquent tax debtor, as identified by the Franchise Tax~~  
12 ~~Board by name and social security number or other taxpayer~~  
13 ~~identification number, who maintains an account at the institution.~~

14 ~~(2) The first data file created by the Franchise Tax Board for~~  
15 ~~purposes of matching tax debtor records to financial institution~~  
16 ~~accountholder records shall be limited to 600,000 tax debtor~~  
17 ~~records. The number of tax debtor records included in a subsequent~~  
18 ~~data file created by the Franchise Tax Board may be increased by~~  
19 ~~no more than 600,000 tax debtor records greater than the number~~  
20 ~~of tax debtor records included in the immediately preceding data~~  
21 ~~file until all eligible tax debtor records are included in the data~~  
22 ~~match file.~~

23 ~~(d) Unless otherwise required by law, a financial institution~~  
24 ~~furnishing a report or providing information to the Franchise Tax~~  
25 ~~Board pursuant to this section shall not disclose to a depositor or~~  
26 ~~an accountholder, or a codepositor or coaccountholder, that the~~  
27 ~~name, address, social security number or other taxpayer~~  
28 ~~identification number, or other identifying information of that~~  
29 ~~delinquent tax debtor has been received from or furnished to the~~  
30 ~~Franchise Tax Board.~~

31 ~~(e) A financial institution shall incur no obligation or liability~~  
32 ~~to any person arising from any of the following:~~

33 ~~(1) Furnishing information to the Franchise Tax Board as~~  
34 ~~required by this section.~~

35 ~~(2) Failing to disclose to a depositor or accountholder that the~~  
36 ~~name, address, social security number or other taxpayer~~  
37 ~~identification number, or other identifying information of that~~  
38 ~~delinquent tax debtor was included in the data exchange with the~~  
39 ~~Franchise Tax Board required by this section.~~

1     ~~(3) Any other action taken in good faith to comply with the~~  
2     ~~requirements of this section.~~

3     ~~(f) The Franchise Tax Board may institute civil proceedings to~~  
4     ~~enforce this section.~~

5     ~~(g) Any financial institution that willfully fails to comply with~~  
6     ~~the rules and regulations promulgated by the Franchise Tax Board~~  
7     ~~for the administration of delinquent tax collections, unless it is~~  
8     ~~shown to the satisfaction of the Franchise Tax Board that the failure~~  
9     ~~is due to reasonable cause, shall be assessed a penalty upon notice~~  
10    ~~and demand of the Franchise Tax Board and collected in the same~~  
11    ~~manner as tax. The penalty imposed under this section shall be in~~  
12    ~~an amount equal to fifty dollars (\$50) for each record not provided,~~  
13    ~~but the total imposed on that financial institution for all such~~  
14    ~~failures during any calendar year shall not exceed one hundred~~  
15    ~~thousand dollars (\$100,000).~~

16    ~~(h) For purposes of this section:~~

17    ~~(1) “Account” means any demand deposit account, share or~~  
18    ~~share draft account, checking or negotiable withdrawal order~~  
19    ~~account, savings account, time deposit account, or money market~~  
20    ~~mutual fund account, regardless of whether the account bears~~  
21    ~~interest.~~

22    ~~(2) “Financial institution” means:~~

23    ~~(A) A depository institution, as defined in Section 1813(e) of~~  
24    ~~Title 12 of the United States Code.~~

25    ~~(B) An institution-affiliated party, as defined in Section 1813(u)~~  
26    ~~of Title 12 of the United States Code.~~

27    ~~(C) Any federal credit union or state credit union, as defined in~~  
28    ~~Section 1752 of Title 12 of the United States Code, including an~~  
29    ~~institution-affiliated party of a credit union, as defined in Section~~  
30    ~~1786(r) of Title 12 of the United States Code.~~

31    ~~(D) Any benefit association, insurance company, safe deposit~~  
32    ~~company, money-market fund, or similar entity authorized to do~~  
33    ~~business in this state.~~

34    ~~(3) “Delinquent tax debtor” means any person liable for any~~  
35    ~~income or franchise tax or other debt referred to the Franchise Tax~~  
36    ~~Board for collection as imposed under Part 5 (commencing with~~  
37    ~~Section 10878), Part 10 (commencing with Section 17001), Part~~  
38    ~~10.2 (commencing with Section 19280), or Part 11 (commencing~~  
39    ~~with Section 23001), including tax, penalties, interest, and fees,~~  
40    ~~where the tax or debt, including the amount, if any, referred to the~~

1 ~~Franchise Tax Board for collection remains unpaid after 30 days~~  
2 ~~from demand for payment by the Franchise Tax Board, and the~~  
3 ~~person is not making current timely installment payments on the~~  
4 ~~liability under an agreement pursuant to Section 19006.~~

5 ~~(i) A financial institution shall be reimbursed by the Franchise~~  
6 ~~Tax Board for actual costs incurred to implement the provisions~~  
7 ~~of this section. Upon receipt of an invoice from the financial~~  
8 ~~institution, cost reimbursement by the Franchise Tax Board shall~~  
9 ~~be limited to the following:~~

10 ~~(1) For one-time startup costs of a financial institution, no more~~  
11 ~~than two thousand five hundred dollars (\$2,500).~~

12 ~~(2) For data matching costs of a financial institution, other than~~  
13 ~~one-time startup costs, no more than two hundred fifty dollars~~  
14 ~~(\$250) per calendar quarter.~~

15 ~~(j) Implementation of this section shall be contingent on the~~  
16 ~~appropriation of funds for the purposes of this section, and shall~~  
17 ~~be operative 120 days after that date.~~

18 ~~(k) This section shall apply with respect to persons that are~~  
19 ~~delinquent tax debtors on and after the effective date of the act~~  
20 ~~adding this section.~~

21 ~~SEC. 2. Section 19560 is added to the Revenue and Taxation~~  
22 ~~Code, to read:~~

23 ~~19560. Notwithstanding any law to the contrary, to effectuate~~  
24 ~~the Financial Institution Record Match System prescribed under~~  
25 ~~Section 19266, the Franchise Tax Board may disclose the name~~  
26 ~~and social security number or taxpayer identification number to~~  
27 ~~designated financial institutions or their authorized processing~~  
28 ~~agent for purposes of matching debtor records to accountholder~~  
29 ~~records at the financial institution. Any use of the data provided~~  
30 ~~by the Franchise Tax Board for a purpose other than those~~  
31 ~~identified by Section 19266 is prohibited and considered a violation~~  
32 ~~of Section 19542.~~

33 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
34 ~~Section 6 of Article XIII B of the California Constitution because~~  
35 ~~the only costs that may be incurred by a local agency or school~~  
36 ~~district will be incurred because this act creates a new crime or~~  
37 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
38 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
39 ~~the Government Code, or changes the definition of a crime within~~



1 ~~the meaning of Section 6 of Article XIII B of the California~~  
2 ~~Constitution.~~

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